

## **REMARKS/ARGUMENTS**

In response to the Office Action mailed January 25, 2010, ("Office Action"), Applicants respectfully request reconsideration in view of the following remarks. Claims 1 and 14 were amended. Claims 1, 2, 10, 13 and 14 are pending. Claim 9 is cancelled and Claims 3-8, 11 and 12 are withdrawn.

No new matter has been introduced. While certain subject matter has been cancelled from the captioned application, such cancellation does not mean that any particular rejection that has been overcome by the above-amendment is proper. Such amendments were done to present the claim in better condition for allowance given the procedural posture of the captioned application. Applicants reserve full rights to reintroduce any cancelled subject matter in this or any other application claiming priority to the captioned application.

### **Rejection under 35 USC §112, second paragraph**

Claims 1 and 14 is rejected under 35 USC §112, second paragraph, because "The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention." Specifically, the Office Action states, *inter alia*, "Claims 1 and 14 recite the limitation "in respective proportions such as to provide a synergistic antifungal effect" without specifying amounts. The metes and bounds of the claim cannot be deciphered."

Applicants have amended claims 1 and 14 to include the relative weight ratios of components (I) and (II). Accordingly, the applicants submit that claims 1 and 14 meet the requirements of 35 USC §112, second paragraph, and thus these claims are in condition for allowance.

### **Rejections under 35 USC §103(a)**

Claims 1, 2, 9, 10, 13 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Antoni-Zimmermann et al. (US 2003/0199490). Specifically, the Office Action asserts, *inter alia*, "It would have been obvious to one of ordinary skill in the art at the time of the invention to utilize the teachings of Antoni-Zimmermann et al. and use a composition comprising imazalil and DDAC. One would have been motivated to combine imazalil and DDAC because Antoni-Zimmermann et al. teach

the combination of one or more other biocidal active ingredients selected from imazalil and DDAC. One would have been motivated to manipulate ranges during routine experimentation to discover the optimum or workable range since the prior art provides the general range. Therefore, one would have been motivated to use the appropriate amount of imazalil and DDAC to achieve the specific ratio of DDAC to imazalil, 1:100 to 10:1.”

The aforementioned rejection is respectfully traversed. Applicants respectfully disagree with the Office Action regarding the aforementioned rejection for at least two reasons. First, the Antoni-Zimmermann reference teaches synergistic biocidal compositions comprising 2-alkyl isothiazoline-3-one and pyrithione as a biocidal active ingredient. It further teaches the possibility to add a further biocidal compound to said synergistic combinations. A very long list of possible further biocidal compounds is given and imazalil and DDAC are among the many compounds listed. There is nowhere a specific “singling out” of either imazalil or DDAC, let alone the combinations of imazalil and DDAC. Second, there is no data or examples in the Antoni-Zimmermann reference that a combination of DDAC and one of the post-harvest antifungal compounds (II), such as imazalil, has a synergistic effect when these compounds are combined in certain ratios. The lack of data, examples and teaching such a combination cannot make the present invention obvious. Accordingly, the applicants respectfully submit that the claimed compounds are not prima facie obvious over Antoni-Zimmermann. Thus, applicants request withdrawal of the rejection under 35 U.S.C. §103(a).

Applicants do not believe that any fees are required in connection with the filing of this Response. Please charge any fees, which may be required for this submission to Johnson & Johnson Deposit Account 10-0750/PRD2188USPCT/JKM.

Respectfully submitted,

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Dated: April 23, 2010